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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/292,191	04/15/1999	WILLIAM MEYER SMITH	AT9-98-355	3200

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EXAMINER

WILLETT, STEPHAN F

ART UNIT

PAPER NUMBER

2141

DATE MAILED: 05/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/292,191

Applicant(s)  
Smith et al.

Examiner  
Stephan Willett

Art Unit  
2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Mar 17, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33 is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-16, 19-25, and 28-32 is/are rejected.
- 7) ☒ Claim(s) 8, 9, 17, 18, 26, and 27 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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**DETAILED ACTION**

***Allowable Subject Matter***

1. Claim 33 is allowed.
2. Claims 8-9, 17-18 and 26-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1-7, 10-16, 19-25, 28-32, are rejected under 35 U.S.C. 102(e) as being anticipated by Miller et al. with Patent Number 5,920,701.

4. Regarding claim(s) 1, 3, 10, 12, 19, 21, 28-30, Miller teaches determining availability of resources, col. 4, lines 46-55 for network requests with replication servers, col. 5, lines 3-13. Miller teaches allocating a scheduled time, col. 7, lines 54-56, to resend a network request, col. 12, lines 24-29 for software and data, col. 5, lines 15-19.
5. Regarding claim(s) 2, 11, 20, 30, Miller teaches selecting and notification of a time slot, col. 12, lines 24-29, to said client, col. 6, lines 28-30, the client being the content source.

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6. Regarding claim(s) 3, 12, 21, Miller teaches a plurality of time slots, col. 6, lines 15-18.
7. Regarding claim(s) 4, 13, 22, 32, Miller teaches breaking a file into subfiles or data frames, col. 5, lines 19-23.
8. Regarding claim(s) 5-6, 14-15, 23-24, Miller teaches real servicing of requests as emergency overage, highest priority or during current transmissions, col. 5, lines 57-58, col. 6, lines 53-56, col. 13, lines 27-30.
9. Regarding claim(s) 7, 16, 25, Miller teaches a portion of time reserved for certain requests, col. 7, lines 15-16, col. 8, lines 50-52.
10. Regarding claim(s) 31, Miller teaches Internet use, col. 5, line 1.

***Response to Amendment***

11. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected.
12. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant's arguments can not be held as persuasive regarding patentability.
13. Applicant suggests "there is no reason for a client to send requests to itself, nothing has been identified as showing the client sending requests to itself ... a map of available agent start times, which maintained by the agent, is regenerated", Paper No. 7, Page 5, lines 1-6. This is accurate, the agent or client sends network requests based on notification of "given scheduling criteria distributed to the agent by the central authority", col. 5, lines 34-45 over the Internet to "a plurality of Internet server machines", col. 4, lines 25-26 for "downloading client software

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upgrades or fixes”, col. 4, lines 63-64 in Berstis. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

14. Applicant suggests “if the outcome of a test to determine whether the agent is able to obtain one of the limited number of network connections, to initiate agent activity”, Paper No. 7, Page 6, lines 11-12. This is an incorrect and a very limited reading of Berstis that is not supported by the references other teachings which teaches “a test is made to determine whether updated usage statistics have been received from the central authority ... or a set of agent start times .... the agent then selects an agent start time from the new map [preselected time slots]”, col. 5, 6, lines 66-67, 6-8 and “a particular start time is selected from the map”, col.. 5, lines 41. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

15. Applicant's arguments fail to comply with 37 CFR 1.111(b) with regard to claim 3 because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the cited portions of the references and relevant portions of the reference. Clearly, selecting a time slot is taught by Berstis by “a test is made to determine whether updated usage statistics have been received from the central authority ... or a set of agent start times .... the agent then selects an agent start time from the new map [preselected time slots]”, col. 5, 6, lines 66-67, 6-8.

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*Conclusion*

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is disclosed in the Notice of References Cited. A close review of the references is suggested. The other references cited teach numerous other ways to perform scheduling the downloading of data, thus a close review of them is suggested.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (703) 308-5230. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (703) 308-5221. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

19. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9605.



Stephan Willett

Patent Examiner

May 15, 2003